

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

HARVEY BRADLEY,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

) Case No. DISM-01-0062

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held at the University of Washington, South Campus Center, Seattle, Washington, on March 4, 2003 and October 8 and 9, 2003.

1.2 **Appearances.** Appellant Harvey Bradley was present and was represented by Phillip Aaron, Attorney at Law. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for violation of University of Washington policies regarding workplace violence. Respondent alleges Appellant made threatening and violent remarks against coworkers.

## II. FINDINGS OF FACT

2.1 Appellant Harvey Bradley was a Trades Helper and permanent employee for Respondent University of Washington (University). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 7, 2001.

2.2 Appellant began his employment with the University, Facilities Services, as a temporary Trades Helper on October 27, 1994. On August 21, 1995, Appellant was hired a permanent Trades Helper. Appellant has no history of prior formal disciplinary action.

2.3 By letter dated July 13, 2001, Jeraldine McCray, Associate Vice President for Facilities Services, informed Appellant of his dismissal, effective at the end of his workday on July 31, 2001. Ms. McCray alleged Appellant violated the University's policy on violence in the workplace when he made threatening and violent remarks against coworkers. Specifically, she alleged that between October and December 2000, Appellant made the following statements to his coworkers, Patrick Diagneault and Don Taylor:

- "I'll let you know when I'm going to do it, so you can take the day off."
- "On the day I leave, I'll let you and Pat know – it'll be payback/retribution time."
- "If Jayme [a coworker] does that to me again I won't be responsible for my actions."
- "I wished I had a gun."
- "I wish I was a mercenary. I would like to kill people for money" [naming the President and Castro as targets].
- "I wouldn't really want to do it but I'd kill my ex-wife's whole family."

2.4 Although Appellant was alleged to have directed the statements to Mr. Taylor and Mr. Diagneault, neither filed reports with management. However, they discussed the statements with

1 Trades Helper Joan Rice. Appellant, Mr. Taylor, Mr. Diagneault and Ms. Rice worked together on  
2 the night shift crew.

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4 2.5 Prior to learning of the alleged comments, Ms. Rice observed what she believed was a  
5 deterioration of Appellant's appearance, and she was aware Appellant was experiencing both  
6 financial and marital problems and at times appeared angry. Ms. Rice did not personally hear  
7 Appellant make any threats against others; however, she became concerned and contacted the  
8 Employee Advisory Service (EAS) on January 2, 2001. Ms. Rice reported Appellant's comments  
9 and indicated she wanted to get help for Appellant. EAS instructed Ms. Rice to contact the  
10 University's human resources department.

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12 2.6 The University subsequently initiated an investigation during which Appellant was  
13 interviewed twice. Appellant denied having made any threatening remarks.

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15 2.7 During his testimony before us, Appellant denied having made any threatening statements.  
16 Appellant claimed the charges were made against him because he is African-American.

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18 2.8 Ms. Rice credibly testified she and Appellant spoke at work, and Appellant shared with her  
19 details of problems he was experiencing with his wife. Don Taylor provided testimony that  
20 corroborates Ms. Rice's testimony that Appellant was experiencing personal problems in late 2000.  
21 Mr. Taylor credibly testified that Appellant talked to him about family and financial problems he  
22 was experiencing. Mr. Taylor credibly testified Appellant, who was in the military reserves at the  
23 time, spoke about being sent to Kosovo and told him on at least three separate occasions, "The day I  
24 leave, I will let you know. Don't come in that day. It's payback time." Mr. Taylor did not report  
25 these statements to management, because he was not concerned for his safety. Following January 2,  
26 2001, Appellant told Mr. Taylor he "didn't really want to do it, but if it came down to it, he would

1 kill them, too” in reference to his wife’s family. After hearing of a student who killed a professor,  
2 Mr. Taylor became concerned that Appellant would follow through with his threats.

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4 2.9 By all accounts, Appellant, Mr. Taylor and Ms. Rice had good working relationships. While  
5 there may have been some minor tension over work assignments, there is no evidence that  
6 Appellant was having any serious work-related problems or that he was angry with any of his  
7 coworkers or supervisors. In fact, Appellant considered many of his coworkers to be his friends.  
8 After reviewing the testimony and evidence, we find no reason for Mr. Taylor to fabricate the  
9 allegations.

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11 2.10 The University employs a diverse workforce, and Appellant provided no credible evidence  
12 to support his claims that the charges against him stemmed from racial tensions or that Mr. Taylor  
13 and Ms. Rice were motivated to fabricate the allegations because of racist tendencies. In fact,  
14 Appellant did not raise concerns about racism and discrimination at any time during the  
15 investigation, and he did not bring these issues forward until this hearing.

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17 2.11 Therefore, we find, on a more likely than not basis, that Appellant made the following  
18 statements to Mr. Taylor: “The day I leave, I will let you know. Don’t come in that day. It’s  
19 payday time,” and “I really don’t want to do it, but if it comes down to it, I will kill them, too” in  
20 reference to his wife’s family.

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22 2.12 Respondent did not present testimony from Mr. Diagneault; therefore, we are unable to  
23 assess his credibility, and we will give no weight to the other statements attributed to Appellant  
24 without some corroborating evidence or direct testimony. Respondent has not proven by a  
25 preponderance of the credible evidence that Appellant made statements: “I wished I had a gun”; “If  
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1 Jayme does that to me again, I won't be responsible for my actions"; or "I wish I was a mercenary.  
2 I would like to kill people for money."

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4 2.13 The University's policy on Verbal and Physical Abuse in the Workplace defines verbal  
5 abuse as "when one person makes statements to another which are demeaning, hostile, or  
6 confrontational." The definition states, "threatening statements are included in such behavior." The  
7 policy further indicates that any "employee who verbally abuses others will normally receive a  
8 written reprimand. Severe or repeated instances of such behavior will result in discipline which  
9 may involve one of the following, suspension without pay, salary reduction, demotion or  
10 dismissal."

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12 2.14 The University's policy on Harassment defines harassment as "verbal or physical conduct  
13 designed to threaten, intimidate, coerce or demean, and may impair an employee's ability to do his  
14 or her job."

### 15 16 **III. ARGUMENTS OF THE PARTIES**

17 3.1 Respondent asserts the issue here is whether Appellant made the threatening statements, not  
18 whether he intended to follow through with the threats. Respondent argues the credible evidence  
19 supports Appellant made threats of violence. Respondent argues the University is responsible for  
20 providing a safe place for employees to work and Appellant's statements violated the University's  
21 policy against violence in the workplace. Therefore, Respondent argues dismissal was the  
22 appropriate sanction.

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24 3.2 Appellant denies he made any threatening statements. Appellant asserts the witnesses who  
25 came forward operated in a "clique" and were motivated by racism to create the lies against him,  
26 because he is an African-American. Appellant further contends the witnesses were demeaning and

1 condescending to other minority employees. Appellant asserts the statements attributed to him are  
2 inconsistent with his personality and background, which includes a career in the military and a top-  
3 secret security clearance. Appellant argues the charges were not supported by the testimony and his  
4 dismissal should be reversed.

#### 5 6 **IV. CONCLUSIONS OF LAW**

7 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
8 herein.

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10 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
11 the charges upon which the action was initiated by proving by a preponderance of the credible  
12 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
13 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
14 Corrections, PAB No. D82-084 (1983).

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16 4.3 Willful violation of published employing agency or institution or Personnel Resources  
17 Board rules or regulations is established by facts showing the existence and publication of the rules  
18 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
19 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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21 4.4 Appellant's statements to Mr. Taylor could be perceived as hostile and intimidating;  
22 therefore, Respondent has met its burden of proving by a preponderance of the evidence that  
23 Appellant's comments to Mr. Taylor violated the University's policy against violence in the  
24 workplace.

1 4.5 In determining whether a sanction imposed is appropriate, consideration must be given to  
2 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
3 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
4 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
5 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

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7 4.6 This Board takes seriously incidents of threats and violence in the workplace. Our role is  
8 not to second guess whether the appointing authority imposed the correct sanction, but to  
9 determine, based on the facts, evidence and testimony presented to us, whether the charges were  
10 proven, and if so, whether the sanction imposed was appropriate under the circumstances. The  
11 Board is not limited by the same constraints placed upon the appointing authority by the merit  
12 system rules in determining whether dismissal or a lesser form of discipline is an appropriate  
13 sanction. Frederick v. Secretary of State, Case No. DISM-98-0064 (1999). Respondent has failed  
14 to meet its burden of proof with respect to several of the allegations, and under the circumstances  
15 presented here, we conclude that Appellant's dismissal is too severe a level of discipline.  
16 Appellant's statements to Mr. Taylor, although disconcerting, were not so severe as to warrant  
17 dismissal.

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19 4.7 Nonetheless, the seriousness and circumstances of this incident warrant a severe disciplinary  
20 sanction. We find that a lengthy suspension is sufficient to prevent recurrence, to deter others from  
21 similar misconduct and to maintain the integrity of the program. Therefore, the disciplinary  
22 sanction should be modified to a six-month suspension, effective August 1, 2001, through January  
23 31, 2002. On July 8, 2002, the Board entered a stay of damages, effective July 12, 2002.  
24 Therefore, Appellant shall be fully reinstated to his position as a Trades Helper February 1, 2002,  
25 however, damages are stayed as of July 12, 2002.

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**V. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Harvey Bradley is granted in part, and it is ordered that the disciplinary action dated July 13, 2001, by which Appellant was dismissed effective at the end of his workday on July 31, 2001, is hereby modified to a six-month suspension without pay, effective August 1, 2001, through January 31, 2002. Appellant is reinstated to his position as a Trades Helper February 1, 2002, damages, however, are stayed as of July 12, 2002.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair